

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**PETER KIEWIT SONS' INC. and
KIEWIT CORPORATION,**

Plaintiffs,

v.

ATSER, LP,

Defendant.

CASE NO. 8:08CV541

ORDER

This matter is before the Court on the Plaintiffs' Motion to Strike (Filing No. 183). Plaintiffs are requesting that the Court strike the Defendant's Statement of Appeal of Magistrate Judge's Order & Objection to Magistrate Judge's Recommendation and supporting brief (Filing Nos. 181 and 182), and award the Plaintiffs reasonable fees and costs incurred in bringing the motion to strike.

The Plaintiffs argue that the Defendant's statement of appeal/objection was untimely. The appeal/objection was timely. NECivR 72.2(a) and 72.3(a), and Federal Rule of Civil Procedure 72 require that a statement of appeal in a nondispositive matter, and/or an objection in a dispositive matter, be filed within ten days after the party is served with a copy of the Order or Recommendation. Judge Thalken's Order and Recommendation was filed on August 25, 2009, and included the admonition that "any appeal of this Order or objection to this Report and Recommendation shall be filed with the Clerk of the Court within ten (10) business days." (Filing No. 171). The Federal Rules of Civil Procedure specify that because the time period in question is less than eleven days, weekends and holidays are not included in the calculation. NECivR 6.1(b) provides three additional days mailing time. Therefore, the Defendant had until Monday, September 14, 2009, to file its

Statement of Appeal and Objection. The Defendant did so on September 14, 2009, and therefore the Statement of Appeal and Objection were timely.

Accordingly,

IT IS ORDERED: Plaintiffs' Motion to Strike (Filing No. 183) is denied.

DATED this 16th day of September, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge